

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JAMES ANDERSON,

Plaintiff,

v.

FREDERICK FORD MERCURY,
INC.,

Defendant.

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C.A. No: K10C-06-023(RBY)

Submitted: February 18, 2011

Decided: May 4, 2011

*Upon Consideration of Defendant's
Motion to Dismiss*

DENIED

OPINION AND ORDER

Maggie Ruth Clausell, Esq., Dover, Delaware for Plaintiff.

George T. Lees, III, Esq., Rawle & Henderson, LLP, Wilmington, Delaware for
Defendant.

Young, J.

SUMMARY

Defendant Frederick Ford Mercury, Inc., (“Ford”) moves to dismiss James Anderson’s state law claims pursuant to Superior Court Civil Rule 12(b). Ford contends that Anderson’s state action is an improper attempt to split claims between federal and state courts. In the alternative, Ford argues that this Court should enter judgment in its favor, or, apparently, prohibit Anderson from conducting discovery.¹ Because Ford’s position is contrary to established Delaware law concerning *res judicata*, which is the essence of the “split claims” defenses, Ford’s Motion to Dismiss is **DENIED**.

FACTS

On November 21, 2008 Anderson filed a complaint against Ford in the United States District Court for the District of Delaware.² Anderson’s complaint alleged that Ford had engaged in unlawful conduct during the course of a retail car transaction. Critically, Anderson’s complaint asserted both federal and state claims. The District Court disposed of all federal claims over which it had original jurisdiction,³ and declined to exercise supplemental jurisdiction over the remaining state claims.⁴ Anderson then timely appealed the District Court’s ruling to the United States Court

¹ Ford has neither adequately briefed nor fully presented these arguments in its Motion to Dismiss. Ford had the opportunity to file either a Motion for Protective Order or a Motion for Summary Judgment. It has not done so. As such, I do not address Ford’s alternative arguments in this memorandum.

² (Def.’s Ex. A.)

³ (Def.’s Ex. I.)

⁴ See generally, *Eubanks v. Gerwen*, 40 F.3d 1157, 1162 (11th Cir. 1994) (citing *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343 (1988) (comity suggests that, with respect to the early disposal of federal claims, any remaining state law claim should be heard in state court if plaintiff desires to press it)).

of Appeals for the Third Circuit.⁵ With Anderson's appeal to the Third Circuit pending, Ford now contends that Anderson's state claims constitute improper claim splitting, and should be dismissed.

DISCUSSION

The rule against claim splitting is an aspect of the doctrine of *res judicata*. It is based on the belief that it is more fair to require a plaintiff to present in one action all of his theories of recovery relating to a transaction, and all of the evidence relating to those theories, than to permit him to prosecute overlapping or repetitive actions in different courts or at different times.⁶ Thus, where a plaintiff has had a "full, free and untrammelled opportunity to present his facts," but has neglected to present some of them or has failed to assert claims which should in fairness have been asserted, he will ordinarily be precluded by the doctrine of *res judicata* from subsequently pressing his omitted claim in a subsequent action.⁷

When a defendant claims that the doctrine of *res judicata* bars the subsequent action, he or she must show that certain elements exist.⁸ First, the same transaction must form the basis for the prior and subsequent suits. Second, the plaintiff must have neglected or failed to assert claims which, in fairness, should have been asserted in the first action.⁹ Upon such a showing, the plaintiff, to prevent dismissal, must then show that there was some impediment to the presentation of the entire claim for relief in the

⁵ (Def.'s Ex. K.)

⁶ *Kossol v. Ashton Condominium Ass'n, Inc.*, 637 A.2d 827 (Del. 1994).

⁷ *Maldonado v. Flynn*, 417 A.2d 378, 382 (Del. Ch. 1980) (citation omitted).

⁸ *Kossol v. Ashton Condo. Ass'n, Inc.*, 673 A.2d 827 (Del. 1994).

⁹ *See Coca-Cola Co. v. Pepsi-Cola Co.*, 172 A. 260, 262 (Del. 1934).

prior forum.¹⁰

Here, the first element is not in question. Neither Ford nor Anderson disputes that the state claims arise out of the same transaction underlying the federal action. Regarding the second element, Anderson did not neglect or fail to assert his state law claims in the first action. As a result, Ford cannot establish *res judicata*.

However, Ford claims that Anderson's appeal of the District Court's decision constitutes "a multiplicity of litigation and an impermissible attempt to split pending actions."¹¹ This argument disregards the substance of Anderson's appeal. Anderson has appealed the District Court's ruling only with respect to his federal claims. Anderson could not have appealed on the basis of his state law claims, because the District Court exercised its discretion by declining to address them. Thus, Ford's arguments concerning a multiplicity of litigation must fail.

Finally, the Court notes that Ford's motion runs counter to established "hornbook law" on *res judicata*. To wit:

A given claim may find support in theories or grounds arising from both state and federal law. When the plaintiff brings an action on the claim in a court, either state or federal, in which there is no jurisdictional obstacle to his advancing both theories or grounds, but he presents only one of them, and judgment is entered with respect to it, he may not maintain a second action in which he tenders the other theory or ground. If however, the court in the first action would clearly not have had jurisdiction to entertain the omitted theory or ground (or, having jurisdiction, would clearly have declined to exercise it as a matter of discretion), then a second action in a competent court presenting the omitted theory or ground should be held not precluded.¹²

¹⁰ *Maldonado*, 417 A.2d at 383-84.

¹¹ (Compl. ¶ 12.)

¹² See RESTATEMENT (SECOND) OF JUDGMENTS § 25 cmt. e.

Thus, even if Anderson had *not* brought his state law claims in the federal action, his state action could still have been saved if the District Court would have declined to exercise jurisdiction over them. This, of course, is precisely what the District Court did – but only after Anderson had already presented his state law claims.

CONCLUSION

A fundamental tenet of the adversarial process is the opportunity of both parties to litigate fully the claims implicated in their dispute. Anderson's state law claims have been fairly presented, but have not been litigated. As such, Ford's Motion to Dismiss is **DENIED**.

SO ORDERED.

/s/ Robert B. Young

J.

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